

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

DAN HORANY
Plaintiff,

v.

**EXXONMOBIL GLOBAL
SERVICES, CO.,**
Defendant.

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CIVIL ACTION NO. _____

DEFENDANT EXXONMOBIL'S NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant ExxonMobil Global Services Company ("Defendant" or "ExxonMobil") files this Notice of Removal pursuant to 28 U.S.C. §§ 1441 and 1446, and respectfully shows as follows:

I.
PROCEDURAL BACKGROUND

1. On September 28, 2016, Plaintiff Dan Horany ("Plaintiff" or "Horany") filed his Original Petition in Cause No. DC-16-12791 in the 44th Judicial District Court of Dallas County, Texas (the "State Court Action").

2. On November 4, 2016, ExxonMobil filed its Original Answer, Special Exceptions, Affirmative Defenses, and Requests for Disclosure.

3. ExxonMobil will promptly file this Notice of Removal in the State Court Action with the clerk of the State Court and will give written notice to Plaintiff of the same.

II.
NATURE OF THE SUIT

4. Plaintiff's claims against ExxonMobil arise, in part, under 29 U.S.C. §1140. Plaintiff alleges that ExxonMobil terminated his employment "to prevent Plaintiff from attaining

pension benefits.”¹ Plaintiff additionally alleges ExxonMobil terminated his employment on the basis of age in violation of Texas Labor Code § 21.051, but does not provide a factual basis for the same. Plaintiff also brings claims for breach of contract, invasion of privacy, and intentional infliction of emotional distress. Additionally, Plaintiff alleges quantum meruit for “retirement benefits”² that Plaintiff claims were part of his compensation for services provided. Plaintiff seeks monetary damages as well as “employment benefits, past and future.”³

III. BASIS OF REMOVAL

5. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. §1331 because this matter presents a federal question concerning a cause of action created by federal law and Plaintiff’s right to relief necessarily depends upon the resolution of a substantial question of federal law. Specifically, Plaintiff alleges that Defendant unlawfully discharged and/or discriminated against Plaintiff for the purpose of interfering with Plaintiff’s attainment of benefits under Defendant’s pension plan.⁴ Because Plaintiff’s claims “relate to” Defendant’s pension benefit plan; pursuant to 29 U.S.C. §1144, Plaintiff’s claims are preempted by federal law.⁵ Moreover, when a civil action includes a claim arising under the laws of the United States as well as a claim not within the original or supplemental jurisdiction of the district court the entire action is still removable pursuant to 28 U.S.C. §1441(c). Additionally, when a civil action includes a claim arising under the laws of the United States, as well as a claim that has not been

¹ See Exhibit B, Plaintiff’s Original Petition& Request for Disclosure, paragraph 9.

² See Exhibit B, Plaintiff’s Original Petition& Request for Disclosure, paragraph 11.

³ See Exhibit B, Plaintiff’s Original Petition& Request for Disclosure, paragraph 19(b).

⁴ 29 U.S.C. §1140; See *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 140 (1990) (“a claim that the employer wrongfully terminated plaintiff primarily because of the employer’s desire to avoid contributing to, or paying benefits under, the employee’s pension fund ‘relates to’ an ERISA-covered plan within the meaning of § 514(a), and is therefore pre-empted”); 29 U.S.C. §1332.

⁵ See also, *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 66 (1987) (“Congress has clearly manifested an intent to make causes of action within the scope of the civil enforcement provisions of § 502(a) removable to federal court”).

made removable by statute, the entire action is still removable pursuant to 28 U.S.C. §1441(c).⁶

IV.
REMOVAL IS PROCEDURALLY CORRECT

6. On or about October 13, 2016, ExxonMobil was served with this lawsuit. This Notice of Removal is filed within the thirty (30) day statutory time period pursuant to 28 U.S.C. §1446(b).

7. Pursuant to 28 U.S.C. §1446(a) and Local Rule 81.1, all pleadings, process orders, and all other filings in the State Court Action are attached to this Notice. Copies of the pleadings filed in the State Court Action are as follows:

- Exhibit A – The Index of Matters Being Filed;
- Exhibit B – Plaintiff’s Original Petition and Request for Disclosure;
- Exhibit C – Return of Service;
- Exhibit D – Defendant ExxonMobil’s Original Answer, Special Exceptions, Affirmative Defenses, and Requests for Disclosure;
- Exhibit E – State Court’s Docket Sheet; and
- Exhibit F – List of All Counsel of Record.

8. Pursuant to 28 U.S.C. §1446(a), Defendant removes this matter to the Dallas Division of the Northern District of Texas United States District Court because it is the district within which Plaintiff’s lawsuit is pending.

9. Pursuant to 28 U.S.C. §1446(d), Defendant will provide written notice to Plaintiff and will file a copy of this Notice of Removal with the clerk in the State Court Action.

⁶ According to 28 U.S.C. §1441(c), if the action would be removable without the inclusion of claims that are not within the original or supplemental jurisdiction of the district court or claims not made removable by statute, the entire action can be removed despite the inclusion of those claims.

V.
PRAYER

WHEREFORE, Defendant ExxonMobil Global Services Company, respectfully requests that the above entitled action be removed from the 44th Judicial District Court of Dallas County, Texas to the United States District Court for the Northern District of Texas, Dallas Division.

Respectfully submitted,

MARTIN, DISIERE, JEFFERSON & WISDOM, L.L.P.

By: /s/ Diana Pérez Gomez

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was sent via facsimile and email on this 11th day of November, 2016, to:

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/s/ Diana Pérez Gomez

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